

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARK ADAMS,)
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Movant,)
)
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v.) No. 4:14CV1097 ERW
)
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UNITED STATES OF AMERICA,)
)
)
Respondent,)

MEMORANDUM AND ORDER

This matter comes before the Court on movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The motion is successive, and the Court will dismiss it.

A jury found movant guilty of being a felon in possession of a firearm. United States v. Adams, 4:08CR180 ERW (E.D. Mo.). On December 4, 2008, the Court sentenced movant to 115 months' imprisonment. Id. The Court of Appeals for the Eighth Circuit affirmed the conviction and sentence. United States v. Adams, No. 08-3920 (8th Cir. July 13, 2010). Movant filed his first § 2255 motion in October 2011. Adams v. United States, 4:11CV1831 ERW (E.D. Mo.). The Court denied the case on the merits, and the Court of Appeals rejected movant's application for a certificate of appealability. Id.

Movant filed the instant motion on June 10, 2014. He alleges that he was incorrectly sentenced as a career offender. He bases his argument on the recent Supreme Court case Descamps v. United States, 133 S.Ct. 2276 (2013), in which the Court held that the district courts may not apply the modified categorical approach to sentencing under Armed Career Criminal Act when the crime of which the defendant was convicted has a single, indivisible set of elements.

Under 28 U.S.C. § 2244(a) and § 2255(h) district courts may not entertain a second or successive motion to vacate unless it has first been certified by the Court of Appeals. The instant motion has not been certified by the Court of Appeals for the Eighth Circuit. As a result the Court may not grant the requested relief.

Additionally, movant was not sentenced as a career offender under the Armed Career Criminal Act, 18 U.S.C. § 924(e). If he were, his minimum sentence would have been fifteen years. Therefore, the grounds put forward in the successive § 2255 motion are meritless.

Finally, movant has failed to demonstrate that jurists of reason would find it debatable whether the petition is successive. Thus, the Court will not issue a certificate of appealability. 28 U.S.C. § 2253(c).

Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED**.

An Order of Dismissal will be filed separately.

So Ordered this 17th day of June, 2014.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE